# MISSOURI COURT OF APPEALS WESTERN DISTRICT

#### COMPLETE TITLE OF CASE

CITY OF KANSAS CITY, MISSOURI,

Respondent,

v.

GEORGIA J. CARLSON,

Appellant.

#### **DOCKET NUMBER WD**72198

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DATE:** October 26, 2010

#### **APPEAL FROM**

The Circuit Court of Jackson County, Missouri The Honorable Gregory B. Gillis, Judge

#### **APPELLATE JUDGES**

Division Two: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and Karen

King Mitchell, Judges

### **ATTORNEYS**

Megan Pfannenstiel and Lowell C. Gard, Assistant City Prosecutors Kansas City, MO

Attorneys for Respondent,

Jonathan Sternberg Kansas City, MO

Attorney for Appellant.



## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

CITY OF KANSAS CITY, M	IISSOURI,	)
	Respondent,	)
v.		)
GEORGIA J. CARLSON,		)
	Appellant.	)

WD72198 Jackson County

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and

Karen King Mitchell, Judges

Georgia Jean Carlson appeals the judgment of the Circuit Court of Jackson County ("trial court") finding that Carlson violated Kansas City's anti-smoking ordinance, No. 080073, and fining her \$50. Carlson claims that Health Department officer Aaron Nieft, who gave Carlson the notice of violation, was without authority to do so because he is not a Kansas City police officer. Carlson's notice of violation and the information subsequently signed by the prosecutor were, she argues, therefore null and void. She also challenges the trial court's taking judicial notice of Kansas City housing code provisions.

#### AFFIRMED.

#### **Division Two holds:**

A trial judge may rely upon his general knowledge about a subject gained from his experience on the bench in making a decision. In this case, the record shows that the trial court's decision was based upon common sense, practicality, and the judge's general knowledge of the process of enforcement of municipal ordinances rather than upon any impermissible judicial notice of particular ordinances, the contents thereof, or cases involving ordinances that were not properly before the court.

Although the Board of Police Commissioners of Kansas City, rather than the city itself, is granted exclusive management and control of the police force in Kansas City, the city may

properly enact and enforce ordinances designed to protect the public health and safety as part of its police power. The smoking ordinance at issue in this case is such an ordinance, and health department inspectors may properly issue violation notices to persons violating the ordinance. In issuing the violation notice in this case, Nieft had no power to arrest Carlson, nor did he attempt to do so. Therefore, he was not acting as a peace officer and did not require a license under RSMo section 590.020.3(1).

Opinion by: Karen King Mitchell, Judge

October 26, 2010

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